

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Interim Suspension  
Order Sought by:

LOUISE R. BAILERY, M.Ed., R.N., Interim  
Executive Director, California Board of  
Registered Nursing, Department of  
Consumer Affairs, State of California,

Against:

OWEN JAY MURPHY, JR., R.N.

Registered Nurse License No. 594614

Respondent.

Case No. 2007-297  
OAH No. 2009030761

**ORDER SUSPENDING LICENSE  
PURSUANT TO BUSINESS AND  
PROFESSIONS CODE SECTION 494**

TO: OWEN JAY MURPHY, JR., R.N.

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, carefully read and considered all moving pleadings and documentary evidence and heard and considered oral arguments in support of and in opposition to the issuance of an Interim Order of Suspension under Business and Professions Code section 494.

David E. Hausfeld, Deputy Attorney General, Office of the Attorney General, State of California, represented petitioner Louise R. Bailey, Interim Executive Director, California Board of Registered Nursing, Department of Consumer Affairs, State of California.

Barry M. Walker, Attorney at Law, represented respondent Owen Jay Murphy, Jr., R.N., who was present throughout the hearing.

At all times relevant to this matter, Business and Professions Code section 494 provided in part:

“(a) A board or an administrative law judge sitting alone . . . may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial

training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:

(1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

(2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.

(b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.

(c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.

(d) At the hearing on the petition for an interim order, the licentiate may:

(1) Be represented by counsel.

(2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.

(3) Present affidavits and other documentary evidence.

(4) Present oral argument.

(e) . . . an administrative law judge sitting alone . . . shall issue a decision on the petition for interim order within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was

previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

(f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licentiate files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.

(g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.

(h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings . . . When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

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(i) Failure to comply with an interim order . . . shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in

subdivision (f), the agency may, upon notice to the licensee and proof of violation, modify or expand the interim order.

(j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.

(k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.

(l) In the case of a board, a petition for an interim order may be filed by the executive officer. . . ."

IT IS HEREBY DETERMINED by a preponderance of the evidence that on October 29, 2007, Owen Jay Murphy, Jr., R.N. (Murphy) was convicted on his plea of nolo contendere of violating Penal Code section 368, subdivision (c) (elder abuse) and Penal Code section 242(battery), each a misdemeanor offense and each offense substantially related to the qualifications, functions and duties of a registered nurse, in the Superior Court of California, County of Riverside, in Case No. RIM 498882. The court placed Murphy on summary probation for five years on condition that he serve 70 days in custody (to be served on weekends), that he pay fines and fees of approximately \$500, that he enroll in and complete an anger management program by August 12, 2008, that he keep away from Silvia M., Christy L. and the Riverside Community Hospital (except for emergency medical services), and that he obey all laws.

IT IS FURTHER DETERMINED by a preponderance of the evidence that in 2004 and 2005, when Murphy was employed at the Kaiser Permanente Riverside Medical Center as a registered nurse, Murphy engaged in inappropriate confrontations with patients on at least three occasions and failed to assist a co-employee in the care and treatment of a patient who needed oxygen even though Murphy was capable of doing so, thereby engaging in acts of gross negligence and demonstrating incompetence. In May 2005, after attending counseling sessions, Murphy resigned his position with Kaiser.

IT IS FURTHER DETERMINED by a preponderance of the evidence that Linda Curci, R.N., Ph.D. (Dr. Curci), a registered nurse and licensed psychologist, reviewed records and reports related to Murphy's misconduct in his capacity as a registered nurse from 2004 through 2006, and the 2007 record of conviction, and concluded that Murphy demonstrated incompetence, engaged in acts of gross negligence and was "a danger to patients who may come into his care." Dr. Curci's expert opinion was not contradicted (there was not sufficient time for Murphy to obtain an expert witness to meet this evidence). Dr. Curci did not have the benefit of reviewing the declarations of eight registered nurses, one licensed vocational nurse, one emergency room physician, and two others employed at

the Parkview Community Hospital in Riverside. Whether the observations and opinions of these persons would have influenced or changed Dr. Curci's ultimate opinion regarding the present danger in permitting Murphy to retain his license, which was provided in a letter dated April 10, 2007, is unknown.

IT IS FURTHER DETERMINED that Murphy will, if he is permitted to remain licensed, seek employment and will interact with patients and some co-employees in an inappropriate manner, all of which will endanger the public health, safety and welfare. This determination is reached on the basis of the expert opinion offered in this proceeding and notwithstanding the declarations of the eight registered nurses, one licensed vocational nurse, one emergency room physician, and two others who worked with Murphy at the Parkview Community Hospital in Riverside whose declarations specifically state or strongly imply that Murphy a competent and safe practitioner.

IT IS FURTHER DETERMINED that permitting Murphy to remain licensed will bring immediate disrespect to the nursing profession, as has been evidenced to some extent by vilification of the California Board of Registered Nursing and Murphy in articles appearing in the *Los Angeles Times* in July 2009, which will further endanger the public health, safety and welfare.

THEREFORE, PENDING A NOTICED HEARING IN THIS MATTER WHICH SHALL BE HEARD ON OR BEFORE AUGUST 25, 2009 IT IS HEREBY ORDERED AND ADJUDGED:

1. This is a proper case for the issuance of an interim license suspension without notice because there is a reasonable probability that petitioner will prevail in the underlying First Amended Accusation and that the public health, safety and welfare will be endangered by permitting respondent Owen Jay Murphy, Jr., R.N. to continue the practice of nursing until there is a noticed hearing.

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2. There likelihood of serious injury to the public that would result by not issuing the interim order of suspension, the benefits of which far outweigh the likelihood of injury to Owen Jay Murphy, Jr., R.N. and others by not issuing the requested order pending a noticed hearing; and,

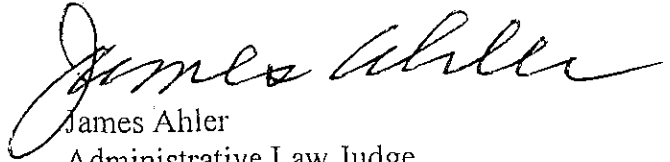
3. Pending further order from the Office of Administrative Hearings, Registered Nurse License No. 594614 issued to Owen Jay Murphy, Jr., R.N. by the California Board of Registered Nursing shall be and hereby is suspended.

IT IS FURTHER ORDERED that this matter shall proceed to a noticed interim suspension hearing to be heard on or before August 25, 2009.

IT IS FURTHER ORDERED that this Interim Order of Suspension shall remain in effect pending a final decision on the underlying First Amended Accusation.

IT IS FURTHER ORDERED that a copy of this Interim Order of Suspension, the petition for the order, and all supporting documents shall be served on respondent Owen Jay Murphy, Jr., R.N. and upon Barry M. Walker, his attorney, by the Office of the Attorney General, State of California by 24-hour delivery service.

Dated: August 4, 2009

  
James Ahler  
Administrative Law Judge  
Office of Administrative Hearings

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